

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:NR:HOU:1:TL-N-1044-00
WGBissell

date: October 2, 2001

to: Joe Jackson, Team Coordinator, Group 1381, Stop 4101-HOU
Territory 1380, Houston

from: Area Counsel
(Natural Resources: Houston)

subject: [REDACTED]
Fluor/Sequa claims for [REDACTED] and [REDACTED]

INTRODUCTION

[REDACTED] had foreign tax credit carrybacks from its [REDACTED] tax year to its [REDACTED] and [REDACTED] tax years. It filed a claim to recover the interest it had paid for the two carryback years. The period during which interest accrued and for which the taxpayer wanted a refund was from the due dates of the returns for each of the two carryback years to the due date for the return of the credit year. The Service's position is that none of this interest is refundable, but because of an adverse court opinion in Fluor is willing to concede the interest for the [REDACTED] month period from the end of the credit year to the due date of the return for that year. This settlement is explained in LGM TL-104, September 18, 1998. As explained in the LGM, to get the benefit of that settlement, the taxpayer must agree to three conditions:

- A. there cannot be any other issues in the case if it is nondocketed;
- B. the taxpayer must concede its liability from the date the deficiency arose to the end of the taxable year in which the foreign taxes were paid or accrued; and
- C. the settlement must be affected by means of a closing agreement rather than by Form 870 to prevent the taxpayer from raising the issue again after all other issues are resolved.

[REDACTED] wants to avail itself of the coordinated settlement offered by the Service in LGM TL-104. In this settlement, the Service would concede restricted interest from the end of the tax year in which foreign tax credits were generated until the due date for that year's return (the

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computation issue), a period of [REDACTED] months. The taxpayer must agree to concede the restricted interest from the due dates for the years to which the credits were carried back until the end of the year in which the credits were generated (the deficiency issue). In light of the above LGM requirements for settlement, you have the following ultimate question: Can the Service concede to [REDACTED] the restricted interest for the [REDACTED] month period without requiring them to concede with finality the restricted interest for the intervening years? In a related question, you wanted to know whether a May/Sequa claim was barred by the statute of limitations, or could be considered as having been made when the taxpayer made its Fluor claim.

DISCUSSION

We sent you a memorandum on August 30, 2001, with our answers to your questions. At the same time, we forwarded a copy of the memorandum to National Office for post-review. (b)(5)(

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(b)(5)(AC) They have decided that we can grant the taxpayer a refund of the interest for the [REDACTED] month period between the end of the year and the filing date without conceding May/Sequa interest for the time leading up to the end of the [REDACTED] year. They reasoned that pursuant to the LGM settlement based on Fluor, the taxpayer is entitled to a refund of deficiency interest for the [REDACTED] month period between the end of the [REDACTED] tax year and the due date for the return, but not for any other period. The Service will apply May/Sequa only to a period of time for which an adjustment is already being made, and since an adjustment for the [REDACTED] month period is allowed under the LGM, the

Service will apply May/Sequa to that period. The LGM does not apply to the interest for the period of time culminating with the end of the [REDACTED] tax year, and there is accordingly no adjustment to be made for that time period. Since no adjustment is to be made for that time period, the Service will not apply May/Sequa to it. The taxpayer would have had to file a claim for refund of that interest, and it did not file such a claim. Essentially, the Service will make an adjustment for May/Sequa interest for a given time period only if adjustments are being made for that time period anyway. Otherwise, the taxpayer must file a timely claim for refund.

If the taxpayer still wants to take advantage of the settlement under the LGM, it must comply with the requirements set forth therein. It must therefore concede a recovery of deficiency interest under Fluor.

Feel free to call Bill Bissell at (281) 721-7357 for any further explanation or with any questions you have.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney-client privilege. If disclosure becomes necessary, please contact this office for our views.

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